

REFERENCE TITLE: real estate transfers; disclosures

State of Arizona  
Senate  
Forty-ninth Legislature  
First Regular Session  
2009

## **SB 1412**

Introduced by  
Senators McCune Davis, Nelson; Representatives Sinema: Ableser, Brown,  
Campbell CH, Farley, Lujan, Meza, Pancrazi, Schapira

AN ACT

AMENDING SECTIONS 11-1133 AND 33-404, ARIZONA REVISED STATUTES; RELATING TO  
REAL ESTATE TRANSFERS.

(TEXT OF BILL BEGINS ON NEXT PAGE)

1 Be it enacted by the Legislature of the State of Arizona:

2 Section 1. Section 11-1133, Arizona Revised Statutes, is amended to  
3 read:

4 11-1133. Affidavit of legal value

5 A. Each deed evidencing a transfer of title and any contract relating  
6 to the sale of real property shall have appended at the time of recording an  
7 affidavit of the seller and the buyer to the transaction, or the agent of  
8 either the seller or buyer, or both, in a form approved by the department of  
9 revenue, who shall declare and jointly certify the following information:

- 10 1. The name and address of the buyer and seller.
- 11 2. The name and address where a tax statement may be sent.
- 12 3. The complete legal description of the property.
- 13 4. The situs address, if any, of the property.
- 14 5. The date of sale.
- 15 6. The total consideration paid for the property, the amount of cash  
16 down payment and whether or not the type of financing included cash, a new  
17 third-party loan, a new loan from the seller, an assumption of an existing  
18 loan or an exchange or trade of property.
- 19 7. Whether or not the estimated market value of personal property  
20 received by the buyer equals five per cent or more of the total  
21 consideration.
- 22 8. The assessor's parcel number or numbers assigned to the real  
23 property by the county assessor or, in the case of a new parcel or parcels  
24 not yet assigned a parcel number, the parcel number or numbers of the  
25 previous parcel or parcels from which the new parcel or parcels are created.
- 26 9. The conditions of the transaction, including the relationship, if  
27 any, of the parties.
- 28 10. The use and description of the property and, in the case of a  
29 residential dwelling, whether the property is to be owner-occupied or rented.
- 30 11. The name and address of the person to contact regarding information  
31 contained on the affidavit.

32 B. The county recorder shall refuse to record any deed and any  
33 contract relating to the sale of real property if a complete affidavit of  
34 legal value is not appended unless the instrument bears a notation indicating  
35 an exemption pursuant to section 11-1134.

36 C. An affidavit is complete for purposes of this section if all of the  
37 required information is stated on the affidavit form or is indicated on the  
38 form as "not applicable".

39 D. A PERSON WHO CAUSES THE FILING OF A DEED OR CONTRACT AS PRESCRIBED  
40 BY SUBSECTION A OF THIS SECTION AND WHO KNOWINGLY FAILS TO FILE A COMPLETE  
41 AND CORRECT AFFIDAVIT AS PRESCRIBED BY THIS SECTION COMMITS A DECEPTIVE  
42 PRACTICE PURSUANT TO TITLE 44, CHAPTER 10, ARTICLE 7.

1           Sec. 2. Section 33-404, Arizona Revised Statutes, is amended to read:  
2           33-404. Disclosure of beneficiary: recording: failure to  
3                           disclose

4           A. Notwithstanding section 33-411, subsection D, every deed or  
5 conveyance of real property, or an interest in real property, located in this  
6 state which is executed after June 22, 1976 in which the grantee is described  
7 as a trustee or acts as a trustee shall disclose the names and addresses of  
8 the beneficiaries for whom the grantee holds title and shall identify the  
9 trust or other agreement under which the grantee is acting or refer by proper  
10 description to the document number or the docket and page of an instrument or  
11 other writing which is of public record in the county in which the property  
12 so conveyed is located AND in which such matters are disclosed.

13           B. Notwithstanding section 33-411, subsection D, every deed or  
14 conveyance of real property, or an interest in real property, located in this  
15 state which is executed after June 22, 1976 by a grantor who holds title to  
16 the property as a trustee, whether or not such capacity is identified on the  
17 document through which title was acquired, shall also disclose the names and  
18 addresses of the beneficiaries for whom the grantor held title to the  
19 property and shall identify the trust or other agreement under which the  
20 grantor is acting or refer by proper description to the document number or  
21 the docket and page of an instrument or other writing which is of public  
22 record in the county in which the property so conveyed is located AND in  
23 which such matters are disclosed.

24           C. Notwithstanding section 33-411, subsection D, a grantee who holds  
25 title as a trustee under a trust or other agreement which is subject to the  
26 disclosure requirements of this section and who receives actual knowledge  
27 after August 18, 1987 of a change in beneficiary, within thirty days after  
28 receiving such actual knowledge, shall record with the county recorder of the  
29 county in which the property is located a notice of the change. The  
30 recording and any subsequent recording of any change in any beneficiary shall  
31 identify the trust or other agreement under which the grantee holds title and  
32 shall include the legal description of the property and a list of the then  
33 current names and addresses of the beneficiaries.

34           D. Notwithstanding subsections A, B and C of this section, a trustee  
35 is not required to record a change of beneficiary if, upon the death of a  
36 beneficiary of a real property trust, the interests of the deceased  
37 beneficiary vest in the beneficiary's estate or in other beneficiaries  
38 identified in a previous recording. If the interest of the deceased  
39 beneficiary vests in a beneficiary not identified in a previous recording,  
40 the trustee shall comply with the recording requirements of this chapter  
41 within thirty days of receipt of both knowledge of the death and the name and  
42 address of the successor beneficiary or beneficiaries or within thirty days  
43 of the first distribution of income or principal to a successor beneficiary  
44 or beneficiaries, whichever occurs first.

1           E. Any conveyance of real property or an interest in real property  
2 which does not include the disclosures required by this section with respect  
3 to the property so conveyed is voidable by the other party to the conveyance  
4 **OR BY AN ACTION BY THE ATTORNEY GENERAL**. Any action to void the conveyance  
5 shall be commenced within two years after the date of recordation of the  
6 document effecting the conveyance.

7           F. If real property or any interest in real property, or any mortgage,  
8 deed of trust or other lien on real property, is acquired for value, the  
9 title, interest, mortgage, deed of trust or other lien is not impaired or in  
10 any way adversely affected by reason of the failure of any person to comply  
11 with the requirements of this section.

12           G. ~~As used in~~ **FOR THE PURPOSES OF** this section, ~~"trustee"~~ does not  
13 include an agent for a disclosed principal, a conservator, a guardian, a  
14 personal representative, an attorney-in-fact, a lessor or lessee under a  
15 lease, a trustee in a bankruptcy or receivership proceeding, a trustee under  
16 a deed of trust, a trustee under a business trust or a trustee under an  
17 indenture for security holders.